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3 March 1999

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-third session
Agenda item 110
HUMAN RIGHTS QUESTIONS

SECURITY COUNCIL
Fifty-fourth year

Identical letters dated 3 March 1999 from the Permanent Representative of Cambodia to the United Nations addressed to the Secretary-General and to the President of the Security Council

On instructions from my Government, I have the honour to transmit herewith a letter dated 3 March 1999 from Samdech Hun Sen, Prime Minister of the Royal Government of Cambodia, addressed to the Secretary-General relating to the report of the group of experts for Cambodia pursuant to General Assembly resolution 52/135 of 12 December 1997 (see annex).

I should be very grateful if you would have the text of the present letter and its annex circulated as a document of the fifty-third session of the General Assembly under agenda item 110, and of the Security Council.

(Signed) OUCH Borith
Ambassador Extraordinary
and Plenipotentiary
Permanent Representative

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ANNEX

Letter dated 3 March 1999 from the Prime Minister of Cambodia addressed to the Secretary-General

I am pleased to acknowledge receipt of the report of group of experts for Cambodia of 18 February 1999, through Ouch Borith, Permanent Representative of Cambodia to the United Nations.

Once again, I wish to draw your attention to my letter and aide-mémoire on an analysis on seeking a formula for bringing top Khmer Rouge leaders to trial, dated 21 January 1999. In it, I called for comprehensive justice for Cambodia and its people and for a full investigation into the crimes committed during the whole period of civil wars in Cambodia from 1970 to 1998.

As you are aware, thanks to the Royal Government of Cambodia's persistent policy and practice of national reconciliation, the Khmer Rouge leaders and its rank and file have totally surrendered, thus a general peace prevails in the country as a whole.

It is quite obvious that peace and national reconciliation are sine qua non conditions for the rehabilitation, socio-economic development and alleviation of poverty of the Cambodian people. As national reconciliation and peace have been achieved throughout the country, the Government is now able to focus its full attention and resources on economic development and improving the living conditions of the Cambodian people.

We have never rejected the accountability of the Khmer Rouge leaders for the crimes of genocide in Cambodia. We just want, however, to caution that any decision to bring the Khmer Rouge leaders to justice must also take into full account Cambodia's need for peace, national reconciliation, rehabilitation and economic development for poverty reduction. Therefore, if improperly and heedlessly conducted, the trials of Khmer Rouge leaders would panic other former Khmer Rouge officers and rank and file, who have already surrendered, into turning back to the jungle and renewing the guerrilla war in Cambodia.

It is needless to say that without peace and security, no development projects can be contemplated or carried out. The decades of war and destruction during the Khmer Rouge rule were more than enough for Cambodia and the Cambodian people. From our most bitter experience in the past, whenever a war breaks out, we are not only unable to find justice for the people, but also unable to protect the people from death.

We are now studying the South African case and the experience of the South African Truth and Reconciliation Commission with the objective in mind of dealing with justice for the Cambodian people, peace and national reconciliation.

(Signed) HUN SEN
Prime Minister

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General Assembly
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Distr.
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A/53/852
S/1999/234
4 March 1999

ORIGINAL: ENGLISH

GENERAL ASSEMBLY
Fifty-third session
Agenda item 62
QUESTION OF CYPRUS

SECURITY COUNCIL
Fifty-fourth year

Letter dated 3 March 1999 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a letter dated 3 March 1999, addressed to you by His Excellency Mr. Aytuğ Plümer, Representative of the Turkish Republic of Northern Cyprus (see annex).

I should be grateful if the text of the present letter and its annex would be circulated as a document of the General Assembly, under agenda item 62, and of the Security Council.

(Signed) Volkan VURAL
Ambassador
Permanent Representative

99-06060 (E) 050399

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ANNEX

Letter dated 3 March 1999 from Mr. Aytuğ Plümer addressed to the Secretary-General

Upon instructions from my Government, I have the honour to refer to the letter dated 19 February 1999 addressed to you by the Greek Cypriot representative at the United Nations, which contains false allegations regarding cultural property in the Turkish Republic of Northern Cyprus (A/53/836-S/1999/178).

Previous allegations concerning the cultural heritage of Northern Cyprus have been amply dealt with in our previous communications addressed to you, most recently in my letter dated 16 October 1998 (A/53/519-S/1998/973). Suffice it to say that it has been the Greek Cypriot side, with the support of Greece, that has systematically tried to eradicate the Turkish-Muslim heritage of Cyprus, in particular during the ethnic cleansing campaign directed against the Turkish Cypriot people between 1963 and 1974. A list of 103 mosques and Islamic holy sites destroyed or damaged during this period was circulated as an appendix to the said letter.

The Greek Cypriot administration, which tries to present itself as the champion of conservation of cultural heritage, continues, on the one hand, to show utter contempt for what is left of the Turkish-Islamic heritage in South Cyprus, where Ottoman Turkish shrines are under threat of disintegration due to total neglect, and, on the other hand, systematically blocks the flow of any external financial or technical assistance to the Turkish Republic of Northern Cyprus for conservation purposes.

The policy of the Government of the Turkish Republic of Northern Cyprus is to protect the cultural heritage of Northern Cyprus irrespective of its religious and cultural origins. The relevant competent authority in Northern Cyprus, namely the Department of Antiquities, works diligently to realize its objectives with available resources. Within this context, the preservation of cultural and historical sites through reuse is carried out in accordance with international instruments governing the preservation of cultural heritage.

In view of the foregoing, it is clear that the allegations of the Greek Cypriot side concerning cultural heritage have no basis and are aimed at portraying Cyprus as a Hellenic island with an exclusively Christian background. No amount of propaganda and rhetoric can change the reality that the Turkish Cypriots are sovereign equals and co-owners of Cyprus and that the island has a rich Turkish-Islamic heritage owing to centuries-long Turkish rule. Until such time as the Greek Cypriot side accepts this reality and engages in a dialogue on the basis of the existence of two sovereign States, there can be no prospects for reconciliation between the two peoples and an eventual partnership settlement.

I should be grateful if the text of the present letter were circulated as a document of the General Assembly, under agenda item 62, and of the Security Council.

(Signed) Aytuğ PLÜMER
Representative
Turkish Republic of Northern Cyprus

United Nations A/53/853

General Assembly

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English
Original: Spanish

Fifty-third session
Agenda item 44
The situation in Central America: procedures for the establishment of a firm and lasting peace and progress in fashioning a region of peace, freedom, democracy and development

United Nations Verification Mission in Guatemala

Note by the Secretary-General

1. The attached document contains the report on human rights of the United Nations Verification Mission in Guatemala (MINUGUA) on the verification of compliance with the commitments of the Comprehensive Agreement on Human Rights(A/48/929-S/1994/448, annex I). In accordance with the practice established since the Mission's inception, I shall convey a copy of this report to the United Nations High Commissioner for Human Rights, with the request that it be brought to the attention of the members of the Commission on Human Rights.

2. The report, which is being transmitted by the Head of the Mission, is the ninth on the subject and covers the period from 1 April to 31 December 1998, during which the Mission continued to verify compliance with the commitments of the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (A/51/796-S/1997/114, annex I). The results of the verification of compliance with the Agreement were reported to the General Assembly on 28 September 1998 (see A/53/421).

3. I wish to reiterate my thanks to the Government of Guatemala and to the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their cooperation with the Mission, without which it would have been unable to function. I also wish to express my gratitude for the ongoing collaboration and support provided by Member States and by the United Nations system in Guatemala.

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Annex

Ninth report on human rights of the United Nations Verification Mission in Guatemala

I. Introduction

1. During the period covered by this report (1 April to 31 December 1998), the United Nations Verification Mission in Guatemala (MINUGUA) continued to verify compliance with all the Peace Agreements signed between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG). Among these Agreements, the Mission verifies compliance with the Comprehensive Agreement on Human Rights, signed on 29 March 1994 (A/48/928-S/1994/448, annex I) and with the human rights aspects of the Agreement on Identity and Rights of Indigenous Peoples, signed on 31 March 1995 (A/49/882-S/1995/256, annex). As already noted in previous reports, given the importance of the enjoyment of the human rights that were included in the Comprehensive Agreement, the Mission is continuing to issue a specific report on the subject.

2. By its resolution E/CN.4/1998/L.39 of 14 April 1998, the Commission on Human Rights decided to conclude its consideration of the human rights situation in Guatemala, after acknowledging that institutionally there no longer existed an established State policy that violated human rights and acknowledging also the fundamental contribution that MINUGUA had made to that end. The General Assembly, for its part, by its resolution A/53/93 of 7 December 1998, authorized the renewal of the mandate of MINUGUA until 31 December 1999. The Assembly requested the Secretary-General, *inter alia*, to keep it fully informed of the implementation of the resolution.

II. Context in which the Mission is carrying out its activities

3. Implementation of the Peace Agreements as a whole continued during the period under review. During the first half of 1998, however, there was a slowing down in the pace of implementation. In an attempt to reverse that trend, the Government and the Commission to Follow up the Implementation of the Peace Agreements, agreed to focus on four priority issues: fiscal policy, the agrarian situation, the justice system and constitutional reforms.

4. Some progress was achieved with respect to fiscal policy and the agrarian situation as a result of the commitment to reach a fiscal pact among the country's social and political forces that would enable the State to increase tax collection to meet the commitments made under the Peace Agreements and the innovative Land Trust Fund bill drafted by the Joint Commission on Land Rights of Indigenous Peoples.

5. With regard to constitutional reforms, on 16 October, following an extensive national debate, the Congress adopted a package of constitutional reforms incorporating the main elements of the Peace Agreements. In accordance with constitutional procedures, the Congress requested the Supreme Electoral Tribunal, by Agreement 41-98, to organize a national referendum on the aforementioned reforms. The organization of the referendum was delayed by the state of national emergency declared in the aftermath of Hurricane Mitch and, subsequently, by an action filed with the Constitutional Court challenging the constitutionality of Agreement 41-98.

6. As the contents of this report indicate, progress in the area of justice has been slow. As far as the protection of human rights is concerned, persistent shortcomings in the system

of public security and administration of justice are perpetuating impunity and undermining the effective exercise of the right to security of person and to due process of law. In April 1998, the Commission on the Strengthening of the Justice System published its report entitled "A new system of justice for peace", which is an important proposal for dealing with the problem of the justice system. Moreover, two major loans to permit the implementation of plans for the reform of the judiciary were approved during the period under review. Meanwhile, the ineffectiveness of the justice system perpetuates the population's feeling that it is unprotected and that perpetrators enjoy impunity.

7. During the period under review, the judiciary expanded its territorial coverage and began the process of increasing people's access to the justice system in their own language through the establishment of 102 new courts and 35 court interpreter posts. Pilot mediation and conciliation centres were established in Guatemala City, Zacapa and Quetzaltenango to ease the congestion of the courts, facilitate access to the system of justice and involve civil society in the settlement of disputes. Five experimental community courts of the peace were also set up during the period under review (see A/52/757, para.22). The Supreme Court of Justice will decide shortly on the future of this experiment. With regard to the Public Prosecutor's Office, 10 prosecutor's offices are currently operating on the basis of the new internal organizational model introduced in June 1998. However, the Office is still underfunded, is not sufficiently decentralized and has little coordination with the National Civil Police.

8. On 26 April 1998, Monsignor Juan José Gerardi Conedera, Auxiliary Bishop of the Diocese of Guatemala and Coordinator of the Archdiocesan Human Rights Office, was murdered two days after the Office presented the report of the project for the recovery of historical memory, which provides an account of the human rights violations that occurred during the 36 years of the internal armed conflict and assigns direct responsibility for most of these violations to agents of the State. The murder of Monsignor Gerardi caused a public outcry both nationally and internationally (see paras.14, 30 and ff).

9. The Secretary-General visited Guatemala on 20 and 21 July. During his visit, he reiterated the full support of the United Nations for efforts to consolidate peace in Guatemala and stressed the need to take action on constitutional reforms, fiscal issues, the land problem and the system of justice. He also urged the authorities to quickly investigate and clear up Monsignor Gerardi's murder.

10. Verification shows that the human rights situation has not evolved as positively during the two most recent reporting periods (1 July 1997 to 31 December 1998), as it did after the signing of the Agreement on a Firm and Lasting Peace (A/51/796-S/1997/114, annex II), when progress was noted by the Mission in its seventh report on the subject (A/52/330, annex, para. 80). The information available thus far confirms that serious violations such as extrajudicial executions, threats and torture have occurred and that there has been a disturbing escalation in social conflicts related to the exercise of freedom of association and labour problems and an alarming increase in lynchings and in the phenomenon known as "social cleansing".

Commitment I. General commitment to human rights

Analysis of verification of the rights accorded priority under the Comprehensive Agreement

11. During the period under review, the Mission admitted 215 complaints involving 2,373 alleged violations of the rights accorded priority under the Comprehensive Agreement; 1,168 of them were confirmed. It should be noted that the figures on confirmed violations correspond to complaints admitted during the period under review and also during previous periods (see appendix). A comprehensive qualitative analysis indicates the persistence of serious violations of the right to life, especially through the practice of extrajudicial executions, and of the right to due process of law and the right to freedom of association and assembly. An overall analysis reveals a decline in violations of the right to integrity and security of person and the right to individual liberty. There were no substantial changes in the number of confirmed violations of the other rights.

Right to life

12. During the period under review, 41 complaints involving 54 alleged violations of the right to life were admitted and 80 violations were confirmed. In the violations confirmed during the current period, responsibility falls mainly on illegal groups, municipal authorities and members of the National Police, the army and the National Civil Police.

13. Special mention should be made of the case of Hugo Rolando Duarte Cordón, an official of the Zacapa Municipal Employees' Union. A labour dispute has been going on between the union and the Mayor of Zacapa, Carlos Vargas y Vargas, since May 1996 (see A/52/330, annex, para. 44). On 30 June, in the presence of a number of witnesses, two individuals shot at Duarte, killing him and wounding a person who was with him. A few weeks earlier, Duarte had prepared a report on alleged unlawful enrichment by the mayor and had stated that, he had been threatened by the mayor and his bodyguards as a result of the report. Verification has uncovered convincing evidence that the alleged murderers were two individuals who, in the Mayor's own words,"are officials of the Municipality of Zacapa assigned to ensure his personal safety".

14. The Mission also verified a number of murders, the circumstances and characteristics of which seem to suggest that they were politically motivated and involved persons linked to State agencies or their acquiescence. In this regard, the Mission is particularly concerned about the murder of the Auxiliary Bishop of the Diocese of Guatemala and Coordinator of the Archdiocesan Human Rights Office, Monsignor Juan Gerardi Conedera. The murder occurred at night as he was arriving home at the parish house of San Sebastian Church in Zone 1 in Guatemala City, an area where various Government, military and security bodies are located. The blunt object or objects used in the attack caused severe injuries. According to the autopsy, death resulted from serious head injuries. The nature of the crime and the victim, the historical and political context in which he lived and the leading role which he played in the Project for the Recovery of Historical Memory all point to the existence of a political motive.

15. Another case is that of Luis Yat Zapeta, acting mayor of Santa Cruz del Quiché. On 16 May, three armed individuals wearing balaclavas burst into his home and murdered him in front of his wife. He had taken up that post three months previously, after the incumbent who had been accused by a group of residents of misappropriating funds had been forced to resign and even to flee Santa Cruz with some of his staff. In the legal proceedings to determine who instigated the crime, a number of witnesses declared that the victim had

received death threats from the former mayor and the former municipal treasurer. Both those officials and one of the accused killers are on trial for the crime. The information gathered thus far supports the theory that the former officials were involved. Serious, persistent threats have been made against the witnesses in this case.

16. As noted above, the Mission is deeply concerned at the persistence of the phenomenon of lynchings (see A/52/946), annex, paras. 21 set seq.). During the period under review, there were 47 lynchings in nine departments, with 38 people killed and an unknown number seriously injured. The Mission took note of cases in which the courageous action of individuals such as police officers, justices of the peace and firefighters prevented the lynching from being carried out. Nevertheless, there is a glaring lack of preventive policies in this area and of effective criminal prosecution of those responsible.

17. A similar lack of compliance with the duty of the State to provide guarantees can be seen in so-called "social cleansing" operations. Note was taken of the existence of coordinated, planned actions to kill persons whose murderers consider them to be criminals or socially undesirable. A case in point took place in the village of Juan Ponce in Gualán, Zacapa Department, where a number of murders occurred which had features typical of "social cleansing" operations. With regard to the murders of Marvin Castañeda España, Elmer Odilio Escobar Díaz, Gonzalo Escobar Pineda and Carlos Benedín Sosa, all of which occurred between March and April 1998, the Mission found that residents had collected money to pay for the execution of the "ringleaders of these gangs", with the tacit approval and even the involvement of local authorities. The murder of Carlos Benedín Sosa, who had complained to MINUGUA, and subsequently to the Public Prosecutor's Office, that the chief of the National Police substation in Gualán had threatened him with death, is worthy of special attention. The Public Prosecutor's Office had summoned the complainant to appear on 21 April, but had transmitted the summons through the very police substation where the individual named in the complaint was stationed. On the aforesaid date, as the complainant was on his way to testify, he was murdered in the vicinity of the Public Prosecutor's Office by persons unknown. The investigation opened by the Public Prosecutor's Office into these incidents does not appear to have made much progress.

18. The unnecessary and disproportionate use of force has also resulted in the infringement of the right to life. On 6 July, in a court in Amatitlán, Guatemala City, defendant José Hernández Martínez took two judicial officials hostage, threatening to detonate a grenade. The National Civil Police, using proper police procedures, made strenuous efforts to free the hostages and capture the defendant. The following day, Hernández obtained a vehicle in which he managed to reach the road leading to Puerto Quetzal. There, the police negotiated the release of one hostage and agreed to hand over a pistol, with the firing pin disabled and containing a single bullet, in exchange for the release of the second hostage. The defendant then detonated the grenade inside the vehicle which he was occupying; immediately thereafter, a senior national Civil Police official approached and fired over 25 shots, according to subsequent expert reports. This action is considered to be disproportionate, in view of the victim's defenceless state following the explosion. The forensic report does not exclude the possibility that the official's action might have contributed to the resulting death.

19. During the period under review, the number of death sentences rose. Of 34 persons condemned to death at the time of completion of this report, in 14 cases the penalty was handed down in violation of article 46 of the Constitution concerning the primacy of international human rights treaties, in the context of the express prohibition contained in article 4.2 of the American Convention on Human Rights (see A/52/946, para. 26). The judicial decisions that were the basis for most of the 14 cases mentioned represent a reversal

of the previous jurisprudence of the Guatemalan courts, which had acknowledged the primacy of the American Convention on Human Rights by commuting death sentences to imprisonment. If these executions are carried out on the basis of the statutory amendment extending the death penalty to new offences, the aforesaid constitutional and international norms would be violated.

20. One example of the real danger of irreversible judicial errors being made through the enforcement of the death penalty is the case of David Ottoniel Méndez Salazar, who was condemned to death by the trial court of Amatitlán. The sentence was repealed due to a violation of procedure. Subsequently, the Villanueva trial court acquitted the defendant for lack of evidence.

21. With regard to death threats, the case of the village of Coyá in the municipality of San Miguel Acatán, Huehuetenango, stands out. On 13 August, a group consisting mainly of residents from the village demonstrated violently in front of the office of the mayor of the municipality over a land dispute. This incident caused the justice of the peace to flee. Later, negotiations began in which the departmental governor's office and officials of the Presidential Human Rights Commission and the Office of the Counsel for Human Rights took part. On 23 August, despite the fact that negotiations were continuing, the mayor, speaking through a megaphone, addressed the population from the municipal building, threatening that members of the army were there to "finish off" the residents of the village of Coyá. The following day, the army went to the village and refuted the mayor's version of events. The Mission registered the incident as a threat against a group of people difficult to quantify, although it was estimated that the threat affected around 3,000 persons. Bearing in mind that the area in which the village of Coyá is situated was particularly hard hit by the internal armed conflict, it is a matter of concern to the Mission that the competent authorities have not initiated any action against the mayor.

Right to integrity and security of person

22. During the period under review, 49 complaints involving 404 alleged violations of this right were admitted and 170 violations were confirmed (10 cases of torture, 6 cases of cruel, inhuman or degrading treatment or punishment, 26 cases of ill-treatment, 109 cases of excessive use of force and 19 cases of other threats). Verification reveals that in the violations confirmed so far, National Police officers, National Civil Police officers, the executive branch and the army are most often the ones responsible.

23. A case in point took place on 14 April at the Canadá Prison Farm in Escuintla. At the request of its director and pursuant to a warrant issued by the competent judge, a raid and search of the prison was carried out. As the police officers started to withdraw, a riot began; they therefore returned to the site and fired into the air and at the prison population, wounding four prisoners. It was found that the excessive use of force stemmed from the fact that the operation was carried out without the necessary coordination between the prison authorities and the police or the necessary means for dealing with such situations.

24. Serious violations involving torture were also confirmed. While most cases are attributed to members of the National Police, cases involving the National Civil Police have also occurred. Complaints of torture in which oilcloth hoods were placed over the victims' heads were particularly serious, not only because of the nature of the action but also because such acts were attributed to members of the new National Civil Police. The Mission found that in Nueva Concepción, Escuintla, agents of the National Civil Police Criminal Investigation Service used this practice to obtain information. On 5 October, while investigating a complaint of extortion, they detained Héctor Francisco Cardona Contreras, deacon of the Asamblea de Dios evangelical church, and his daughter. The victims resisted

their captors, who were wearing plain clothes. At the National Civil Police station, the agents placed a black oilcloth hood over the head of Cardona Contreras and beat him on the head and chest, demanding that he talk about the extortion. The forensic medical report confirmed that the injuries were consistent with the account given by the victim. The police report states, however, that the deacon suffered a fall at the time of the arrest, which caused him injuries that did not require medical attention.

Right to individual liberty

25. During the period under review, 21 complaints involving 81 alleged violations of the right to individual liberty were admitted, and 63 violations were confirmed (4 enforced disappearances, all of which were described in the eighth report, 34 arbitrary arrests and 25 arrests in violation of legal guarantees). Verification indicates that arbitrary arrests and some arrests in violation of legal guarantees are continuing. In the confirmed violations, National Police officers, the judiciary, the National Civil Police and the army are most often those alleged to be responsible.

26. In connection with this right, four aspects stand out during the period under review. First, the army has repeatedly made arbitrary arrests outside the framework of Decree No. 90/1996, in the absence of a situation of *flagrante delicto* or of an order issued by a competent judge, particularly in departments such as El Petén. Secondly, arbitrary arrests have been carried out by members of the National Police, who have allegedly planted narcotic substances among detainees' belongings in order to give the arrests an appearance of legality. Thirdly, other priority rights, such as the rights to life and to integrity of person, have been violated, and in some cases, justice has been obstructed through the falsification of police reports. Lastly, note was taken of the inaction of the institutions responsible for investigating and punishing the perpetrators of such violations.

27. One example of the serious violations that can accompany the arbitrary deprivation of liberty occurred in Chimaj, La Libertad, Department of El Petén. On 15 July, Cruz del Carmen Betancourt Maas was contacted by a lieutenant-colonel in command of the El Subin advanced command post, and by a second captain of the military unit located within the Basic Resources International oil refinery. The two officers, wearing plain clothes, passed themselves off as employees of the refinery. Using various pretexts, they took Betancourt to where they were supposedly going to make contact with individuals who were subjecting the refinery to extortion. There, they threatened him to make him admit to being the perpetrator of the extortion. They then took him to the military unit, where they forced him to copy and sign an extortion note. Hours later, they handed him over to the National Civil Police in La Libertad, where they left anonymous extortion notes received by the corporation, among which was the one which they had forced him to write. Betancourt remained in prison for 66 days, until the judicial process ended with his release. To date, no investigation into the harassment to which Betancourt was subjected during his detention by the State, or its illegality, has been ordered.

Right to due process of law

28. During the period under review, 94 complaints were admitted involving 880 alleged violations, and 534 violations were confirmed (96 violations of the right to be presumed innocent, 85 violations of the right to be tried before a competent, independent and impartial tribunal, 85 violations of the right to defence and to be assisted by a lawyer, 80 violations of the right not to be compelled to testify against oneself, 43 violations involving obstruction of the work of the National Police, the National Civil Police, the Public Prosecutor's Office and the judiciary, and 108 violations of the legal duty of the State to investigate and punish).

In the violations confirmed so far, the Public Prosecutor's Office, the judiciary, the National Police and the National Civil Police are most often the ones alleged to be responsible.

29. In accordance with its mandate, the Mission is required to verify both that due process is observed and that the competent national bodies carry out such investigations as may be required in an independent and effective manner, in accordance with the Constitution and with international human rights norms.

30. With regard to the murder of Monsignor Gerardi (see para. 14), the Mission took note of a number of procedures prejudicial to the effectiveness of the investigation and to due process of law. The following factors stand out in this regard: the total lack of protection of the crime scene, which allowed it to become contaminated; the inability of the Public Prosecutor's Office to direct the investigative activity of the National Civil Police, which led to a lack of coordination between the two institutions; the break in the chain of custody of various pieces of evidence; and, lastly, the unilateral nature of the line of investigation pursued by the prosecutor in the case, Otto Ardón, who ruled out the possibility of a political motive and the involvement of illegal security forces or clandestine groups, as can be seen from the indictment which he introduced before the judge.

31. There were also irregularities in the treatment of detainees. On 30 April, on the basis of an identification made from a photograph, the National Civil Police detained an indigent person, Carlos Vielman, accusing him of responsibility for the crime. Evidentiary proceedings were carried out without the necessary judicial authorization or the presence of a lawyer; during the interrogation, the examining magistrate, Isaías Figueroa, allowed the press to film and photograph the defendant, thereby undermining the value of any subsequent identification by witnesses. Then, purely on the basis of a statement by one of the witnesses who claimed to recognize Vielman, he was put on trial for murder. In ruling on a remedy of appeal, the competent chamber drew the attention of the judge to the lack of control over the prosecutor, noting the "total deficiency in the trial procedures". On 29 July, Vielman was released on bail.

32. The photographic analysis of the Monsignor Gerardi's corpse, and the presumption that some wounds to the head and hands could be dog bites, pointed the investigation towards a priest, Mario Orantes, who owned a German shepherd dog, and a domestic employee, Margarita López, both of whom were living in the parish house at the time of the murder. On 22 July, the two were arrested. Orantes was tried as the perpetrator of the murder and López as an accessory. The court ordered the priest's dog taken into custody. In the indictment, which does not refer to a motive, the Public Prosecutor's Office reiterated the hypothesis that Orantes, with the help of third persons, attacked and killed Gerardi "using a blunt instrument or by kicking" and "with the help of his German shepherd dog, which was trained to attack". The Archdiocesean Human Rights Office, which had been a joint plaintiff since 6 May, accused the prosecutor of lack of impartiality, maintaining that the hypothesis of a political motive had not been investigated. Furthermore, verification by the Mission was obstructed by the prosecutor, who systematically refused access to the case file. At the end of the period under review, the prosecutor resigned and Celvin Galindo was appointed to replace him. It is to be hoped that the new prosecutor's actions will be supported by the Public Prosecutor's Office and by all the State institutions concerned.

33. In most cases involving the right to due process, verification reveals that investigatory procedures essential in order to shed light on the facts and bring the perpetrators to trial are still not being carried out. The typical slowness of court proceedings and the lack of coordination among the various components of the justice system obviously contribute to the violation of the duty of the State to prevent, investigate and punish.

34. A case in point is that of José Aroche Cristales, justice of the peace in Santa Bárbara, Suchitepequez, who was murdered on 10 January 1997 by three men driving a pick-up truck. The investigation of this grave incident exhibits deep flaws: procedural inactivity on the part of the Public Prosecutor's Office, even though it has been in possession of the Criminal Investigation Service report since 11 February 1997; extremely serious delays on the part of investigators in the Public Prosecutor's Office, who delivered their report a year and a half after the fact; absence of a ballistics test; and failure to use the photofit picture produced in order to identify the perpetrators.

35. On 5 March, the then public prosecutor of Occidente reported to the Retalhuleu Public Prosecutor's Office the existence of a gang that trafficked in children. The prosecutor in charge of investigating the case was Silvia Jerez, who was murdered on 20 May. The Public Prosecutor's Office has not taken the necessary action to elucidate the facts, even though a recommendation for immediate action was made by special investigators of the Criminal Investigation Service of the capital city. Moreover, it has not collected the reports submitted, even though they mention the same individuals, who repeatedly commit the crime using the same modus operandi. Not only is this trafficking carried on openly and flagrantly; in addition, it has been confirmed by seven witnesses, who have made similar statements to this effect.

36. Another illustrative case was the disappearance of Gregorio Isabel Sebastián Marcos, age 14, on 22 August in Barillas while he was collecting firewood with some friends. Days later, his body, bearing signs of torture, was found in a nearby lake. The justice of the peace of Barillas ordered the transfer of the body to the morgue of Huehuetenango hospital for an autopsy. The forensic physician said that he had performed the autopsy, but had not submitted the report because he had not received the necessary order; the Mission found a copy of the order in the judicial file. Although this crime caused a great public outcry, the Public Prosecutor's Office has not carried out any investigation or requested the forensic physician to submit the autopsy report.

37. Lastly, the case of former army captain Marco Antonio Ríos Morales is noteworthy. On 13 August, a device exploded in his car, which was parked at the university where he worked. The Mission noted that the initial investigation was carried out by members of the Office of the Chief of Staff for National Defence and Military Intelligence, while the National Civil Police remained passive. Moreover, the Public Prosecutor's Office, invoking reasons based on the internal division of labour, initially did not accept the victim's complaint or take any steps with regard to his complaints of harassment, temporary damage to his telephone lines and pursuits in the street, with repeated death threats. Without having received the results of the expert evaluations, the Public Prosecutor's Office surmised that the attack had been perpetrated by the victim himself. The Government failed to implement promptly the precautionary measures requested by the Inter-American Commission on Human Rights. On 26 August, the victim left the country for fear of another attempt on his life or that of his family.

38. With regard to the most internationally significant trials affecting the State of Guatemala, meaningful progress has likewise been lacking. In the criminal trial for the enforced disappearance in 1992 of Efraín Bámaca, commander of the Frente Luis Ixmatá of URNG (see A/50/878, annex, para. 43 (a)), no progress was made in the investigation during the period under review. In May, the lower court of Retalhuleu ordered a stay of proceedings at the request of the defendants' counsel.

39. In the ongoing trial for the death of Pedro Sas Rompiche (see A/52/330, annex, para. 58), on 2 February the court of first instance convicted Obdulio Villanueva, a specialist on the Presidential General Staff, of the crime of involuntary manslaughter. Both the Public

Prosecutor's Office and the joint plaintiff appealed the judgement. The Ninth Division of the Court of Appeal confirmed the sentence but revoked its incommutable nature. On that basis, on 28 April, the first trial judge ordered the convicted person's release upon payment of a fine imposed for civil liability. The Mission noted that the Supreme Court had ordered the transfer of the magistrates who were to hear the appeals prior to the public hearing. The Mission cannot rule out the possibility that this decision was taken under pressure.

40. With respect to the case of the enforced disappearance of Juan José Cabrera Rodas (see A/52/330, annex, paras. 28 et seq.), the official investigation has not made much progress; the members of the Presidential General Staff who participated in the operation were interviewed by the prosecutor in the case, who indicated that they had not provided any new information from which the whereabouts of Cabrera Rodas could be determined. Three years after the death of Manuel Saquic, an evangelical pastor and Coordinator of the Human Rights Committee of the Kaqchikel Presbyterian Church (see A/50/878, annex, para. 43 (g)), the judicial proceedings have made no progress. The arrest warrant, issued in 1995 against a former military commissioner accused of committing the crime, has not been executed. In the criminal trial for the disappearance and subsequent death of Nicolás Chapman Blake and Griffith William Davis in 1984, the arrest warrants issued in 1995 against a number of persons accused of the crimes still have not been acted upon, the facts have not been elucidated and there is no conclusive evidence in relation to the criminal responsibility of the only person arrested.

41. The proceedings in the Carpio and Mack cases are still characterized by delays. With respect to the murder of Jorge Carpio Nicolle and three of his aides (see A/50/878, annex, para. 43), the court of first instance handed down a judgement on 21 November 1997, which was appealed by the plaintiff, the Public Prosecutor's Office and counsel for the defence. Since 26 February 1998, the case has been awaiting a decision in the Third Division of the Court of Appeal. The President of the Division claimed that the delay was attributable to the transfer of the official who was handling the case and to the voluminous documentation in the case file.

42. In the trial for the murder of Myrna Mack (see A/52/946, annex, para. 44), on 5 March 1998 the joint plaintiff reiterated her request, which had already been made and decided upon by a military judge in 1996, to send a letter rogatory to Canada requesting the taking of evidence from five witnesses in the case. Owing to irregularities such as the judge's unwarranted delay in completing the relevant formalities, on 11 June the joint plaintiff submitted a complaint to the Office of Court Supervision. That entity issued a legal opinion that was unfavourable to the judge and submitted the complaint to the Presidency of the judiciary, which imposed a penalty on a subordinate official and not on the judge. In the view of the Canadian authorities, it is unlikely that the letter rogatory will be acted upon. On 22 June, the joint plaintiff requested the disqualification of the judge, Isaías Figueroa; this request was granted. On 17 September, the Third Division of the Court of Appeal found that the delay in carrying out certain formalities had been to the accused persons' advantage, and laid the blame on the disqualified judge. The trial was referred to the Second Criminal Court of First Instance and the hearing for the intermediate stage was scheduled for 27 January 1999.

43. In the trial for the murder of Epaminondas González Dubón (see A/52/946, annex, para. 71), on 18 May the First Court of First Instance sentenced Marlon Salazar López and Roberto Trabanino Vargas to 25 years' imprisonment for the crime of murder. Three other persons accused in the case were convicted of robbery and possession of drugs for consumption, while six others were acquitted. The plaintiff, who is the victim's son, decided not to pursue the proceedings after reporting a series of threats to the Mission. The court

did not accept this decision and the trial is currently in the Third Division of the Court of Appeal, which is to rule on the appeal lodged by the convicted persons' lawyers. On four occasions, the Division set a date for the appeal hearing, but the latter has not yet been held because the relevant notifications were not delivered on time to all the parties.

44. During the period under review, some progress was made in the trial for the massacre perpetrated against the community of Río Negro, Baja Verapaz, in 1982. Although the unprecedented decision, taken on 30 November by the trial court of Salamá, Baja Verapaz, to hand down a conviction for a massacre certainly represents progress, this decision applied only to three indigenous former military commissioners, who were found to have been the actual perpetrators of one of the massacres. The decision, in addition to sentencing the culprits to death, does not rule on the responsibility of the former patrol members and army personnel mentioned in the accusation and in the committal order.

45. With respect to the Xamán case (see A/52/946, annex, para. 73), the oral proceedings began on 21 April 1998 but were suspended on 28 April because the joint plaintiff requested the disqualification of the members of the court. After this request was denied by a court appointed by the Supreme Court, one of the members of the trial court of Cobán excused himself from continuing to take part in the trial. The excuse was rejected on 3 July. On 8 June, the joint plaintiff made another request for the court's disqualification, which was denied on 21 August. The decision to apply the written proceedings of the Act concerning the judiciary to these requests, instead of the interlocutory proceedings established in the Code of Criminal Procedure, violated the principles of oral conduct and continuity that must guide the oral proceedings and delayed their resumption. Consequently, once the requests had been denied, the court had to begin the oral proceedings over again. The Mission is concerned at the fact that, between June and September, two members of the court were transferred, since their replacement delayed the beginning of the oral proceedings until 12 October, preventing the court from setting a date and making logistical arrangements. Finally, the oral proceedings began on 25 November.

Political rights

46. Since its first report, the Mission has recommended that particular attention should be paid to various factors that adversely affect the exercise of political rights: the high rate of under-registration of voters, the lack of basic documentation and the high rate of abstention. In this connection, since 1995 the Mission has asserted the need for legislative reforms and programmes to correct the causes of these phenomena. In 1996, considering that the State has a duty both to respect political rights and to create the conditions necessary for their exercise, the Mission closely monitored the efforts of the Congress of the Republic to amend the Elections and Political Parties Act. This instrument, together with the promotion of voter registration, would help to remedy these problems. In late 1996, a number of reform proposals and the establishment of the single identity document were reflected in the Agreement on Constitutional Reforms and the Electoral Regime (see A/51/776–S/1997/51, annex I). Pursuant to this Agreement, the Electoral Reform Commission was established, consisting of representatives of the Supreme Electoral Tribunal and of political parties, and was given the mandate of agreeing on amendments to the Act. The Mission viewed these initiatives as a major contribution to the strengthening of future electoral processes, and stressed that their implementation would require "careful planning and scheduling".

47. To date, the Congress of the Republic has not adopted the Electoral Reform Commission's proposed reform of the Elections and Political Parties Act. Despite the Mission's repeated recommendations and only months from the general elections scheduled

for 1999, very little progress has been made in the adoption of provisions and programmes aimed at increasing political participation in general and that of the most commonly excluded groups (women, indigenous people, the uprooted population) in particular. The Mission believes that the above-mentioned reforms, had they been adopted, would have established an appropriate legal framework for increasing participation, and regrets the successive delays in considering these reforms.

48. At the same time, even if a comprehensive reform is not possible, the Mission considers it essential for the State as a whole to make every effort to increase informed civic participation. In this connection, it appreciates the fact that this issue is considered a priority for 1999 by the Government and the Follow-up Commission.

49. The Mission calls upon the Supreme Electoral Tribunal, as the State institution responsible for electoral processes, to spare no effort to carry out its legally assigned functions, particularly in view of the low rate of electoral participation. In this connection, the Mission will pay particular attention to the exercise of political rights in 1999.

Right to freedom of association and assembly

50. During the period under review, the Mission admitted six complaints concerning 838 alleged violations of the right to freedom of association and assembly, and confirmed 303 violations, broken down as follows: 103 violations of the right to freedom of association, 179 of the right to organize and 21 of freedom of assembly. Among the violations confirmed, alleged responsibility is attributed mainly to the executive branch, the judiciary and municipal authorities. A number of violations are attributed to other State institutions, for instance, the disputes which arose in the Congress and in the National Energy Institute.

51. The exercise of the right to organize is affected by the lack of adequate protection against anti-union practices, even though ordinary law and the International Labour Organization (ILO) conventions ratified by Guatemala contain provisions on the subject. For example, despite the provisions of articles 209 and 380 of the Labour Code, which prohibit the dismissal of workers for forming a union or for filing a collective grievance, the Mission learned of a number of cases in which, following lengthy trials, judicial reinstatement orders were issued but not implemented.

52. Also of concern is the practice of making criminal accusations against union leaders for acts allegedly committed in the context of labour disputes, which hinders the development of consensual forms of dispute settlement and violates the freedom to organize. This was the case of the dispute involving the Izabal banana plantations in 1998, in which criminal proceedings were brought against a number of union leaders and members. On 5 June, in the dispute involving the Alabama and Arizona plantations, parties who sided with the employers filed a complaint with the Public Prosecutor's Office of Puerto Barrios against the national leader of the Unión Sindical de Trabajadores de Guatemala, Jorge Estrada, for the offences of damage, coercion and threats, allegedly committed on 13 February. The court of first instance of Izabal ordered the leader's arrest solely on the basis of the testimony of the complainants and of other persons whose identity is not revealed in the case file. MINUGUA verified that the accused had not been in the place where the acts had been committed on that date. It should be noted that, in this dispute, in which a number of workers were dismissed, workers who refused to stop supporting the ad hoc committee that had been set up or to renounce their intention to join the local union were prevented from entering the plantations, giving rise to declarations of illegal strikes and unwarranted dismissals, the verification of which revealed procedural irregularities.

53. Guatemala has not finished adjusting its domestic legislation to the international norms on the protection of fundamental rights which it has ratified. It should be noted that various provisions of the Labour Code and of Decree No. 35-96 remain to be amended; the competent organs of ILO have indicated that such amendment is necessary in order to bring Guatemala's legislation into line with ILO Conventions Nos. 87 and 98 concerning freedom of association and the right to organize and to bargain collectively.

Commitment to promote rules and mechanisms for the protection of human rights

54. In September 1996, by Legislative Decree No. 78-96, the Congress adopted the Code of Children and Youth, which was due to enter into force one year later. It is based on the Convention on the Rights of the Child, which was ratified by Guatemala on 10 May 1990. After successive postponements of its entry into force, on 22 September 1998 the Congress postponed it again until the year 2000. The Mission wishes to emphasize that the Juvenile Code currently in force is not in line with the provisions of the Convention in the area of juvenile justice and does not include all the rights laid down in the Convention. Moreover, although the Act on the Prevention, Punishment and Eradication of Family Violence has been in force since 24 November 1996, it is applied on very few occasions. The indifference of judicial bodies to the large numbers of children who are victims of violence is also cause for concern.

55. During the reporting period, the Congress of the Republic amended the act concerning conversion of penalties (Decree No. 56-69), which offers the benefit of commuting part of a sentence to work or study days. The amendment involves the exclusion from this benefit of persons who have committed particularly serious crimes, based on the degree of danger; this contradicts article 19 of the Constitution and article 10, paragraph 3, of the International Covenant on Civil and Political Rights, which indicate that the aim of the penitentiary system is the reformation and social rehabilitation of prisoners.

56. In November, a new Immigration Act (Decree No. 95-98) was approved, which also regulates the right of asylum and protection for refugees and stateless persons. Some articles conflict with the 1951 Convention relating to the Status of Refugees and the 1967 Protocol relating to the Status of Refugees, both of which have been ratified by Guatemala. The act imposes criminal penalties of from three to six years' imprisonment on anyone who allows the concealment of aliens who have entered or are present in Guatemalan territory, without making any distinctions in respect of the special status of refugees and asylum-seekers, as established by article 31 of the Convention relating to the Status of Refugees.

Commitment II. Commitment to strengthening institutions for the protection of human rights

57. In the Comprehensive Agreement, the parties took the view that support for and the strengthening of the judiciary and the Public Prosecutor's Office in the exercise of their functions in the area of human rights, and respect for their autonomy and freedom of action, are of vital importance for the strengthening of the rule of law.

58. With regard to budgetary allocations, the judiciary requested 750 million quetzales for fiscal year 1999, based largely on the needs involved in the implementation of its modernization plan; the executive branch assigned it 366.5 million quetzales in the regular budget. This figure meets the minimum percentage of 2 per cent of ordinary revenues established in the Constitution.

59. With regard to the commitment to protect the autonomy and freedom of action of the institutions responsible for the protection of human rights, it should be noted that numerous cases of intimidation and threats against judges and prosecutors continue to occur. A noteworthy case was the murder of prosecutor Silvia Jerez (see para. 35), who was responsible for the investigation of important cases such as that of the "Agosto Negro" gang. Added to this is the intimidation suffered by officials of the Public Prosecutor's Office in Quiché who were investigating the murder of the acting mayor (see para. 15). These actions caused alarm and fear among the officials concerned because of the insecure conditions in which they are carrying out their work. In the judiciary, several judges have complained that they have been subjected to death threats in the exercise of their functions, including the judge of the second court of first instance in Chimaltenango and the justice of the peace of Comalapa. This situation once again points to the urgent need to implement the special protection programmes for judges and prosecutors (see A/52/946, para. 67).

60. Special attention should be paid to the difficult situation faced by subjects of judicial proceedings and witnesses in cases of human rights violations. In this respect, the Mission reiterates its concern about the failure to adopt the necessary administrative and budgetary measures to implement the Act for the Protection of Persons Involved in the Conduct of Judicial Proceedings and Persons Linked to the Administration of Criminal Justice. The report by the plaintiff in the Epaminondas González Dubón case that threats had been made against him, and, on some occasions, the failure to apply promptly the precautionary and provisional measures provided by the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights reflect the urgent need to implement this legislation and to grant effective guarantees to the various procedural actors.

61. With regard to the Office of the Counsel for Human Rights, the Comprehensive Agreement establishes the Government's commitment to support initiatives designed to improve its technical and material conditions. MINUGUA has repeatedly insisted on the need to increase the budgetary allocation for the Counsel. Recently, the Secretary-General urged the executive and legislative branches to endorse the budget proposal of the Office of the Counsel for Human Rights for the year 1999 (see A/53/421, para. 5). Despite this, the Office's budget for 1999 did not show any increase, which in real terms means that it declined by nearly 7 per cent.

Commitment III. Commitment against impunity

62. The Mission has repeatedly drawn attention to a twofold deficiency in efforts to combat impunity: first, the persistence of shortcomings in the criminal investigation system and in the administration of justice, a trend which has been maintained; and, secondly, a lack of commitment and diligence with regard to the perpetration of human rights violations by agents of the State. This is reflected in the large number of violations verified in respect of the actions of officers of the National Police and the National Civil Police and officials of the Public Prosecutor's Office and the judiciary, and the fact that most of the criminal proceedings in cases of serious human rights violations have made little headway.

63. The courts' excessive delays in ruling on remedies and in conducting oral proceedings, as in the Carpio, Argueta-Barreneché, Blake and Noriega cases, among others, jeopardizes the right to speedy and full justice. In this connection, and although for the third time an inter-agency commission has been set up to assist in the investigation, the judicial proceedings to investigate the murder of evangelical pastor Manuel Saquic are at a complete standstill. In the case of Jorge Marroquín Martínez, who was murdered in 1997, the opening

of the oral proceedings has been pending since January 1998 because of the failure to set up the trial court at Chiquimula.

64. Another relevant aspect which affects the investigation of serious human rights violations and also applies to other unlawful acts is that the activity of the competent bodies only extends to actual perpetrators, so that there is no question of investigating or establishing the responsibility of intermediate authors or accessories. Thus, even though there are indications or elements in the investigation which would make it possible to shed light on the responsibility which senior military officers might bear for violations committed by their subordinates or as intermediate authors, at the time of completion of this report no sentence had been passed on grounds of such responsibility. The inaction of prosecutors and judges continues to be a constant factor. The Carpio, Blake, Bámaca, Stessel and Gerardi cases are examples of this reluctance to act. Special mention should be made of the cases of the Río Negro and Agua Fría massacres, in which the investigation and prosecution carried out by the Public Prosecutor's Office were deficient in terms of identifying who planned the massacres, and the court also failed to keep the case open in order to investigate the possible responsibility of hierarchical superiors.

65. The Mission noted the persistence of certain attitudes which encourage impunity when agents of the State are involved in human rights violations. These include, in particular: (a) failure to investigate and consequent validation of arbitrary action, as in the case of the arbitrary arrests carried out by members of the armed forces in the Department of El Petén (see para. 27); (b) hiring of defence lawyers for the accused by a State institution such as the armed forces which shares responsibility for fulfilling this commitment (see A/52/946, para. 73); (c) changing the classification of crimes to less serious offences, as in the Sas Rompiche (see para. 39) and Hugo Duarte (see para. 13) cases; (d) stay of proceedings in cases involving agents of the State in which no exhaustive and timely investigation was made, as in the Bámaca case; (e) failure to investigate a political motive when there is sufficient evidence to warrant the investigation of this hypothesis, and concentration of the efforts of the competent national authorities on the motive of ordinary crime, as in the Stessel and Gerardi cases; and (f) shortcomings in the administrative procedures to investigate the responsibility of public officials denounced for human rights violations, including total absence or abandonment of an investigation or non-application of penalties, application of inadequate penalties and absence of an effective administrative procedure to guarantee due process.

66. Lastly, it is still being noted that, as a result of the lack of coordination between the Public Prosecutor's Office and the National Civil Police, the investigation of crimes is extremely slow and is insufficient to establish the facts and identify the material and intellectual authors. The functions performed by the Criminal Investigation Service of the National Civil Police and the formulation of a plan for the restructuring and internal reorganization of the Public Prosecutor's Office constitute significant, but still inadequate, efforts to improve the technical capacity of these institutions on the basis of a modern and functional structure.

Commitment IV. Commitment that there are no illegal security forces and clandestine structures; regulation of the bearing of arms

67. During the period under review, the Mission noted that illegal security groups and clandestine structures continue to exist in various parts of the country; it is often difficult to distinguish their activities from those of organized crime. Verification of the actions of

these groups encounters obvious limitations, precisely because of their clandestine nature. They share the characteristic of operating with the tolerance or participation, either direct or indirect, of agents of the State, and have broad operational capacity.

68. Membership and motivation vary. It is here that the line is most blurred between clandestine State structures per se, such as those established during the armed conflict for counterinsurgency or national security purposes, and typical structures of organized crime, which develop networks of corruption within the State apparatus. For example, the information obtained in this period and previous periods indicates that one and the same structure may include not only members of former military structures, such as counterinsurgency paramilitary groups and security forces; persons linked to current State structures, including, increasingly, local governments and municipal security forces; and persons linked to private interests, including private security firms and neighbourhood committees; but also persons linked to organized crime.

69. The motivation seems to derive both from economic interests and from political or personal interests. Their actions may fit into the context of so-called "social cleansing" operations, criminal activities, illegal crime control, whether organized or not, the securing of economic or political advantages by illegal means, and personal vendettas.

70. The survival of these structures can be explained, in many cases, by the constant impunity that surrounds their actions. This situation is the result of systematic cover-up practices engaged in or encouraged by members, accomplices or corrupt persons entrenched in the system of justice and public security. It seriously undermines the autonomy and independence of these institutions, which are pressured from within and from outside to prevent the investigation of the facts and criminal prosecution when the culprits are linked to the interests of these illegal groups (see commitment II).

71. As to clandestine structures at the local level, the adverse effects of the continuing impunity of these groups can be gauged, in respect of so-called "social cleansing" operations, by an incident which occurred on the road to Bethel, La Libertad, in El Petén. The Mission's previous report (see A/52/946, paras. 84 et seq.) mentioned 10 extrajudicial executions in the village of Vista Hermosa on that road, which were attributed to a group comprising former members of the Voluntary Civil Defence Committees and former military commissioners. During the period under review, information was obtained about the execution of a further nine people from the village of Palestina. This illegal group's initial objective of "social cleansing" appears to have evolved into a political and economic one in the villages of Vista Hermosa, Palestina, Los Manueles and Los Josefinos, in the same municipality. The latter victims did not have criminal backgrounds; some of them had had some kind of run-in with members of the illegal group and others represented economic and political authority. Verification is revealing elements which suggest the support and acquiescence of some members of Military Zone No. 23 for the group's activities.

72. In addition, in departments in the south-eastern part of Guatemala, the Mission found that a clandestine group called "Los Chuchos" is operating with impunity, engaging in, *inter alia*, social cleansing operations, extortion and kidnapping. Verification is uncovering strong evidence that the mayor of Nueva Santa Rosa, Pedro García Arredondo, is involved in this criminal organization.

73. As to clandestine structures at the national level, the Mission has paid particular attention to verifying the existence or otherwise of such structures in relation to the murder of Monsignor Gerardi. Although such verification does not yet permit a definite determination as to the involvement of illegal security mechanisms, it has uncovered many leads or elements which were not analysed or were ruled out at an early stage by the

authorities in charge of the investigation. The Mission has stated repeatedly that this lack of attention to the hypothesis of a political crime tarnishes the actions of the Public Prosecutor's Office. The Mission reiterates that neither the route taken by Monsignor Gerardi nor the circumstances surrounding his death rule out the possible participation of clandestine structures in the murder. Moreover, the Mission believes that the failure to investigate this possibility exhaustively can only feed suspicions that in this case, as in many others in which State agents are involved, State bodies are reluctant to act.

74. Efforts to combat illegal security forces are complicated by the proliferation of private security firms which operate essentially without controls. Many of them disregard the legislation governing them (Private Police Act, Congressional Decree 73–70). In addition, this legislation is inadequate and inapplicable to the current activities of these firms. The increase in the number of such firms during the past few years and the lack of supervision of their members have made it difficult for the State to exercise control through the National Civil Police using the mechanisms provided by law. Verification has shown that over 200 such firms currently exist, of which 55 are legally authorized to operate. In this regard, the Mission notes that the Follow-up Commission plans to review the legislation on defence, public security and intelligence agencies in the near future, in accordance with the Peace Agreements.

75. The Arms and Munitions Control Department of the Ministry of Defence lodged several reports concerning companies engaging in the sale of arms and ammunition. According to those reports, such companies have been engaging in activities intended to weaken the Department's power to regulate the trade in arms and ammunition. The Department views the arms trafficking situation in the country as critical and considers the number of weapons in circulation to be considerably greater than during the internal armed conflict, a factor which contributes to the climate of lack of public safety. The Department has adopted a policy of restricting private companies' access to arms and ammunition, but companies have resisted this approach by lodging appeals with the Constitutional Court. The Court has handed down two decisions on the matter: in one, it upheld the Department's power to refuse to renew private companies' licences to deal in arms and ammunition but established that it could not restrict transactions covered by such licences prior to their cancellation; in the other, it declared unconstitutional a Department directive restricting the purchase of ammunition. The Court ruled that, under article 38 of the Constitution, only an act of Congress can regulate the conditions for exercising of the right to bear arms. This trend towards greater judicial protection of the right to own and bear arms, on the basis of the legislation currently in force, makes it urgent that a new Arms and Munitions Act be adopted rapidly.

Commitment VII. Safeguards and protection of individuals and entities working for the protection of human rights

76. During the reporting period, the Mission saw a significant increase in the number of complaints of threats and intimidation against people working for the protection of human rights. After the murder of Monsignor Gerardi, the Mission, which received various complaints of threats, noted a considerable worsening of the climate of fear and intimidation. Some people reported having been targeted by various means, including death threats, direct intimidation through surveillance, anonymous letters, telephone calls and being followed. Among the recipients of the reported threats were priests and members of the Catholic Church, promoters of the project for the recovery of historical memory, forensic anthropologists, journalists, human rights activists, witnesses and students. The means used

and the anonymity of those responsible have made verification difficult. In some cases, a series of threats were made using letters or telephone calls which repeat the same basic message. Several of the people who reported threats are individuals who have distinguished themselves professionally and publicly in their different fields of work, while others are well known for having handled trials which had a major impact on public opinion.

77. During the reporting period, the Catholic Church was the institution which received the greatest number of threats, in various parts of the country. Monsignor Próspero Penados del Barrio, Metropolitan Archbishop of Guatemala, reported that three days after the death of Monsignor Gerardi, he received three telephone calls threatening him with death. Similar threats were made against Pietro Notta, a promoter of the project for the recovery of historical memory and priest of the Cristo Nuestra Paz parish in the district of El Limón in zone 18 of the capital city. On 10 May, the sister of the housekeeper of the parish house was stopped in the street by two individuals who asked her to tell the priest that they would kill him unless he left the country. The priest left Guatemala on 24 May.

78. Reports were also received of threats against persons associated with the Archdiocesan Human Rights Office. A member of the forensic anthropology team and a student received various telephone calls threatening them with death unless they abandoned their activities in the exhumation of clandestine graves in Alta Verapaz and Sololá. Death threats were also received by the director of the radio station *Voz de la Buena Nueva* in San Marcos, which is own ed by the Archdiocese and which had carried out a campaign in protest at the death of Monsignor Gerardi.

79. Various human rights organizations also reported being harassed and threatened during the reporting period. The reports mention telephone calls conveying threats or requesting information about working hours, men taking photographs of vehicles and offices, being followed in vehicles, and other forms of intimidation. Several members of the governing body of the National Council of Guatemalan Widows reported being subjected to telephone harassment, being followed in vehicles, and being watched by unknown persons.

80. In November, during the Río Negro massacre trial, the Mission received complaints of threats against witnesses who took part in the oral proceedings and witnesses of other massacres which are currently the subject of judicial proceedings. The Mission is verifying these complaints and the actions of State institutions.

Commitment VIII. Compensation and/or assistance to the victims of human rights violations

81. In the Comprehensive Agreement, the parties recognized the need for a programme of compensation and/or assistance to the victims of human rights violations. The programme, together with the work of the Clarification Commission, should help to heal the wounds left by the armed conflict and to achieve national reconciliation. A timetable for the fulfilment of this commitment was included in the Agreement on the Implementation, Compliance and Verification Timetable for the Peace Agreements (see A/53/421, para. 7).

82. In its previous report, the Mission recommended that projects to assist the villages and areas most directly hit by the armed conflict should be initiated right away, without waiting for the outcome of ongoing discussions on the details of the compensation (see A/53/421, para. 7). There has been some progress with respect to this recommendation during the reporting period. The Peace Secretariat is designing two programmes which are still at the preparatory stage: one with the support of the National Peace Fund, the Peace Secretariat, the United States Agency for International Development and the International

Organization for Migration, and the other financed by the United Nations Development Programme. The first programme will give priority to communities which suffered the most serious human rights violations, have the highest poverty levels and are receiving no assistance from the Government or donors. A preliminary selection process has identified four municipalities. The second programme is a pilot project to be carried out in the Department of Baja Verapaz.

III. Final observations

83. This report has two purposes: first, to provide as objective an analysis as possible of the overall situation of human rights in the country during the reporting period; and, second, to evaluate the performance of the various bodies responsible for protecting human rights. In recent years, and particularly since the signing of the Peace Agreements, the civilian security forces, the armed forces and the judiciary have undertaken a reform process in which progress has been uneven. By describing the way in which these bodies have addressed the human rights issue, the report seeks to provide their representatives, and society as a whole, with an instrument for evaluating this process so that the necessary corrective measures can be taken, as appropriate.

84. The Mission's previous report, which covered the period from July 1997 to March 1998, stated that one of the main factors militating against the enjoyment of human rights in Guatemala was criminal violence. This remains true in the current reporting period. The State's primary weakness in the area of human rights remains its inability to tackle the crime problem through the administration of speedy and full justice. This inability to tackle the problem continues to encourage people to take justice into their own hands, whether through lynchings or through "social cleansing" operations. Far from being a solution to crime, however, such actions represent an additional challenge to the consolidation of the rule of law. The limitations on the State's capacity to respond also foster feelings of vulnerability and frustration among the population, offering fertile ground for the propagation of authoritarian solutions incompatible with the strengthening of democracy.

85. Of course, primary responsibility for addressing this situation of insecurity rests with State institutions. However, an analysis of the cases of lynching shows that tackling the crime problem is not simply the State's task. The different national leaders, universities, social organizations and the media also have a role to play in this regard, both by promoting a better understanding of the problem and by developing responses which combine prevention and punishment. The observation concerning lynchings also applies to an understanding of the overall issue of criminal violence, which has multiple causes and solutions. In this regard, the Mission recalls that the Peace Agreements included a commitment to establish an Advisory Council on Security for the express purpose of involving society in the problem of internal and external security and giving State action the scope and legitimacy which only full public participation can provide. It is time to fulfil this commitment, which could also alleviate a situation made even more complex and sensitive by the imminence of the election campaign.

86. In addition to the persistence of criminal violence, another source of particular concern is the fact that verification shows that no progress is being made as regards respect for human rights in Guatemala. Although not all the statistics for the reporting period are available, the gradual decline in the number of violations, which began in the second half of 1996, has come to a halt. The Mission acknowledges that the majority of violations verified were not the result of Government directives intended to cause or conceal them.

However, the fact that some cases point to a political motive is a source of serious concern. In view of this lack of progress, the Mission recommends that the State implement a policy of promotion and protection of human rights and that it act decisively to ensure that the decline in human rights violations continues. This requires, *inter alia*, that the Presidential Human Rights Commission (COPREDEH) be strengthened in its role of coordinating and raising awareness of the function which the bodies of the executive branch must perform in the field of human rights.

87. In its previous report on the situation of human rights, the Mission recommended that the phenomena of lynchings, "social cleansing" and the possible resurgence of illegal security forces should be given priority on the State's security agenda because they accounted for some of the criminal violence which was militating against the enjoyment of human rights and they were fundamentally incompatible with the rule of law. This recommendation has not been acted upon, and these problems have in fact worsened during the reporting period.

88. The police have also disregarded the recommendation that they should coordinate their efforts to prevent lynchings and "social cleansing" operations, while the Public Prosecutor's Office and the judiciary have disregarded the recommendation to investigate and prosecute the instigators and perpetrators of such actions. The media have a fundamental role to play in civic education and in raising awareness among the general public and State officials, focusing on prevention, the deterrent role of the authorities and the criminal prosecution of the culprits.

89. The Public Prosecutor's Office and the police must do their utmost to combat crime; the cooperation of the entire State apparatus and the population is also needed, but only within the strict framework of the law. It is disturbing therefore to note the emergence or expansion of illegal groups of various kinds, particularly at the local level, which use illegal, clandestine methods and commit serious violations of human rights. The Mission reiterates that no public official should tolerate or participate in the actions of these groups. It also recommends that the Government give priority to action to eradicate such groups, since the action taken thus far has been inadequate and has not produced tangible results.

90. With regard to the National Police and the National Civil Police, there has been no progress in the development and implementation of effective measures to prevent or punish abuses and excesses committed by police officers. This fact, added to the many violations committed by members of both the National Police and the National Civil Police, makes it difficult for them to gain the population's trust and cooperation. While the increase in numbers of the new National Civil Police and the extension of its area of operation make it possible to say that the incidence of violations is relatively low in the new police force, the resurgence of cases of torture, some of them involving members of the new police force, is extremely serious; for that reason, the Mission considers it urgent that steps be taken to eradicate this practice.

91. It is also essential to update the regulations on firearms and private security firms and to ensure their effective control by the competent authorities. In this regard, the Follow-up Commission has given priority to fulfilling the security commitments contained in the Agreement on the Strengthening of Civilian Power, including that of promoting the reform of the Arms and Munitions Act.

92. Verification shows that the justice system continues to exhibit serious shortcomings in the areas of criminal investigation and respect for the right to due process. The Mission has repeatedly stressed that impunity for violations and crimes cannot be combated effectively unless the competent national bodies coordinate their activities with regard to

the investigation, trial and punishment of perpetrators. The first few months of work of the Coordinating Forum for the Modernization of the Justice Sector have not brought about any improvement in the operational or territorial coordination of these institutions.

93. The Mission also reiterates its recommendation that the Public Prosecutor's Office should be given the necessary resources to take effective preventive action and special measures to protect persons who are at risk because of their involvement in judicial proceedings. It also recommends that prosecutors should be given greater support and that the capacity of the Public Prosecutor's Office to fulfil its legal duty of supervising the functioning of the National Police and the National Civil Police should be optimized.

94. During the reporting period, there were several murders which were particularly serious because of their impact on public opinion and the nature of the victims. It is essential that they should be effectively investigated and that those responsible should be punished, in order to avoid the risk of a resurgence of the political violence of the past. It is urgent that measures be taken to prevent and investigate such acts, since the prevailing impunity could cause an increase in their occurrence in the run-up to the elections and following the publication of the report of the Clarification Commission. Furthermore, given the climate of insecurity affecting people working for the promotion and protection of human rights since the murder of Monsignor Gerardi, the Mission urges the authorities to take the necessary steps to protect such persons and groups.

95. With regard to the upcoming elections, the Mission urges the competent State bodies to make special efforts to guarantee the full exercise of political rights. Those rights include, in particular, the right of equal access to public service, the right to be registered on the electoral roll, the right to vote freely and the right to hold political office. The Mission recommends that the Supreme Electoral Tribunal take appropriate steps to promote public participation. Accordingly, it also recommends that the competent authorities take the necessary measures to prevent acts of violence and to guarantee the safety of the population in a political climate free of intimidation and fear.

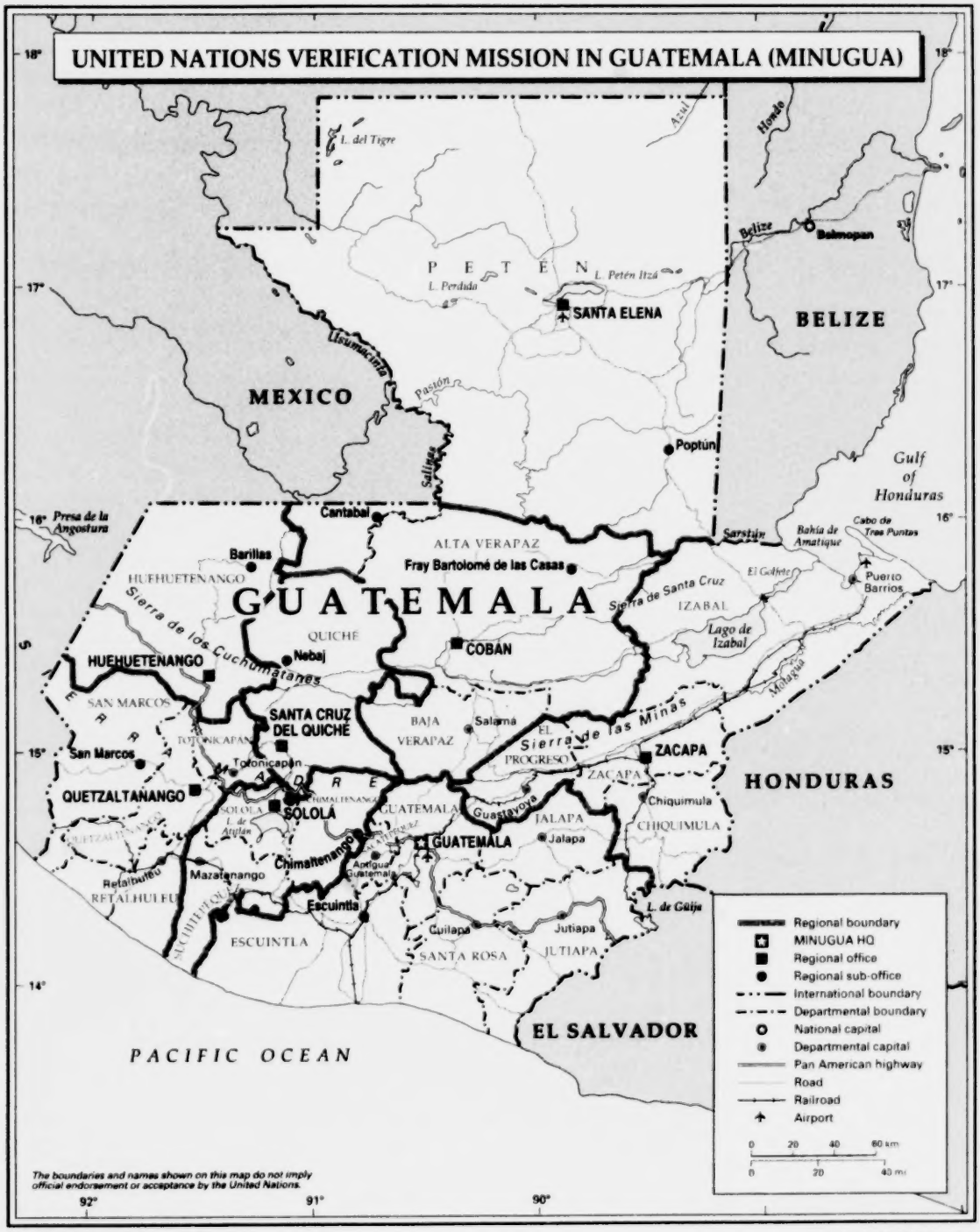
Appendix

Statistics on human rights violations during the period from 1 April to 31 December 1998

	Reported in the period under review				*Reported in earlier periods*		
	Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	*Total confirmed in the period under review*
Right to life							
Extrajudicial executions or deaths in violation of legal guarantees	20	28	18	17	44	33	50
Attempted extrajudicial executions	5	7	3	3	2	2	5
Death threats	16	19	10	2	40	23	25
Total	**41**	**54**	**31**	**22**	**86**	**58**	**80**
Right to integrity and security of person							
Torture	5	11	4	2	8	8	10
Cruel, inhuman or degrading treatment	6	8	4	4	3	2	6
Ill-treatment	25	43	25	18	9	8	26
Excessive use of force	6	113	109	107	2	2	109
Other threats	7	229	18	11	132	8	19
Total	**49**	**404**	**160**	**142**	**154**	**28**	**170**
Right to individual liberty							
Arbitrary detention	12	54	31	26	8	8	34
Detention in violation of legal guarantees	8	26	14	13	14	12	25
Kidnapping	1	1	1	0	3	0	0
Hostage-taking	0	0	0	0	0	0	0
Enforced disappearance	0	0	0	0	4	4	4
Forcible, unjust or discriminatory recruitment	0	0	0	0	0	0	0
Total	**21**	**81**	**46**	**39**	**29**	**24**	**63**
Right to due process							
Right to be presumed innocent	13	125	15	15	83	81	96
Right to be judged by a competent, independent and impartial judge	4	118	2	2	119	83	85
Right to be tried within a reasonable time	2	5	3	3	5	3	6
Right to defence and to be assisted by a lawyer	5	120	5	5	81	80	85

	Reported in the period under review				*Reported in earlier periods*		
	Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	*Total confirmed in the period under review*
Right to be assisted by an interpreter	0	2	1	1	0	0	1
Right not to be compelled to testify against oneself	0	0	0	0	80	80	80
Right of appeal	1	104	0	0	0	0	0
Right of habeas corpus	0	1	1	1	11	11	12
Right of access to the justice system	9	29	14	14	3	3	17
Obstruction of the work of the National Police, the Public Prosecutor's Office and the judiciary	19	55	19	19	24	24	43
Legal duty of the State to investigate and punish	40	320	123	34	83	74	108
Right to compensation	0	0	0	0	0	0	0
Legal guarantees for the victim	1	1	1	1	5	0	1
Total	**94**	**880**	**184**	**95**	**494**	**439**	**534**
Political rights							
Right to have access to public service	0	0	0	0	0	0	0
Right to be registered on the electoral roll	1	50	0	0	0	0	0
Right to vote	0	0	0	0	0	0	0
Right to hold political office	0	0	0	0	0	0	0
Total	**1**	**50**	**0**	**0**	**0**	**0**	**0**
Right to freedom of expression	**2**	**2**	**2**	**0**	**0**	**0**	**0**
Right to freedom of association and assembly							
Right to freedom of association	1	3	2	0	103	103	103
Right to organize	4	834	33	33	146	146	179
Freedom of assembly	1	1	0	0	21	21	21
Total	**6**	**838**	**35**	**33**	**270**	**270**	**303**
Right to freedom of movement and residence							
Deprivation of documents	0	0	0	0	0	0	0
Enforced population displacement	0	0	0	0	4	4	4
Freedom of movement	1	14	14	14	0	0	14
Total	**1**	**14**	**14**	**14**	**4**	**4**	**18**

	Reported in the period under review				*Reported in earlier periods*		
	Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	*Total confirmed in the period under review*
Violations of the Agreement on Identity and Rights of Indigenous Peoples							
Freedom of thought, conscience and religion	0	0	0	0	0	0	0
Use of indigenous languages	0	50	0	0	0	0	0
Use of indigenous dress	0	0	0	0	0	0	0
Right to register names in indigenous languages	0	0	0	0	0	0	0
Total	**0**	**50**	**0**	**0**	**0**	**0**	**0**
Grand total	**215**	**2 373**	**472**	**345**	**1 037**	**823**	**1 168**



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